File No. 35 - 04
Serial Nos. 1-4.

1904.

GENERAL AND REVENUE SECRETARIAT.

Courts.
(III ~~Legislation~~)

Part A: Manuscript
for August 1905.

Serial Nos. 1–4.

Jurisdiction of Criminal Courts in Native States over Native Officers & Soldiers of the Indian Army.

G.R.S. 11] 1904-05

GENERAL AND REVENUE SECRETARIAT.

(Courts) for August

NOTES.

File No. 35

FILE HEADING.

Jurisdiction of Criminal Courts in Native States over Native officers and Soldiers of the British Army.

From

The Asst. to the Resident in Mysore.

No. 3573 Dated 25th July 05 Received 2nd August 05.

Diary No. 1285	Enclos. -	Spare Copies. 1 -	Serial No. 1

BRIEF ABSTRACT OF LETTER.

Forwards the views of the Government of India in the matter.

NOTES AND ORDERS.

1. Submitted with a draft communicating the same to Criminal Courts & Police officers for their information & guidance. A draft to the Residency with letters No. 5 also put up.

2. Draft approved.

K.S. Chandra Rao
5-8-05

JK.S
4-8-05

KR.N.N
4/8/05

Notes—First sheet.

MGOPB—5,000—16-5-04

G.R.S. 12

General and Revenue Secretariat.

File No. 35 of 1904

Serial No.

3. Two drafts submitted for approval.
5-8-04

2) Draft submitted to the Dewan Sahib for approval (thro the 2nd committee)
5-8-1904

2/64
5-8-04

3) Draft approved
C.
6/8/04

6 copies
8/8
8-8-04.

3 From the First Assistant to the Resident in Mysore requesting arrangements be made for the attendance of certain witnesses at the trial of Zeabuddin Khan.

Send a draft to the District Magistrate Bangalore with a copy of letter No 5403 dated 28-10-04 from the First Assistant to the Resident in Mysore.

Nov 6 10 pm Passed & fair copy signed. Please despatch with yellas.
28-10-04.

Nov 29-10-04

NOTE—Contn. sheet.

MGCPB—10,000—19-4-04

Cl 7 95 1904

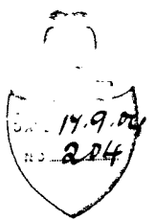
Submitted to His Highness.

A draft letter to the Resident in the matter of certain instructions conveyed by him regarding the future jurisdiction of Mysore Criminal Courts over Native Soldiers of the British Army, is herewith submitted for approval. Before communicating them to the courts concerned, it is deemed expedient to have certain doubts touching them cleared up. The draft itself refers to the various points requiring elucidation and may be approved.

15. IX. 09

N 2 35 Yr

Record of Case submitted for the orders of His Highness the Maharaja.



Subject.

Draft to Residency regarding the jurisdiction of Criminal Courts in Native States over Native officers and soldiers of the British Army.

Order.

181/20.9.04

5 Approved

~~KRW~~

19/9/04

20.IX.04

20.9.1904

20.9.1904

G.R.S. 12]

General and Revenue Secretariat.

File No. 35 of 1904-05

Serial No.

To the 1st Asst Resident No. 2265 of 20/9/1904

~~Reports on formation of Cadre proposed~~

~~by this Asst Resident No. 2637 of the 11th May 05~~

Requests to be informed of the procedure to be adopted by the Courts in cases

a) when a native soldier of the British Army commits within the state which not on leave an offence which does not subject him to arrest.

b). when he commits therein which on leave an offence which does not subject him to arrest

c). when he commits therein which not on leave an offence which subjects him to arrest

d) where the offence is one falling outside the Indian Explosives Act, and states that it is presumed that the expression "an offence against" is independent of the circumstance whether the native soldier is on the limits of the Cantonment or not.

3. From the First Asst to the Hon'ble the Resident No. 2637 of the 11th May 1905

States that as regards (a) the Courts of Native states have no jurisdiction in cases mentioned in (a); that as regards (b) the native soldier or officer

NOTE—Contn. sheet.

MGCPB—10,000—19-4-04

G.R.S. 12]
General and Revenue Secretariat.

File No. 35 of 1904-05

Serial No.

who, while on leave on a native state commits an offence of any kind against the laws of such state is amenable to the jurisdiction of such courts: With as regards (c), the offender may be arrested by the state authority in any case in which the laws of the state permit of such arrest, but he should be handed over forthwith to the nearest Military authority; that the words "on some previous occasion" may be interpreted in their broadest sense but not so as to include cases of a native soldier who has been already tried for an offence committed while on duty & lastly that the Govt of India are prepared to waive the restriction imposed by the proviso to this resolution.

4. Perhaps the whole correspondence may now be communicated to the magistrate & Police officers in the state for their information & guidance. ~~[illegible]~~ Send ~~[illegible]~~ with a draft for approval.

13/5/05 13/5/05

8. As the present letter of the F. A. Resident modifies the provisions communicated in the letter

NOTE.—Contn. sheet.

MGCPB—50,000—17-2 05

[G.R.S. 12]
General and Revenue Secretariat. | File No. 35 of 1904

Serial No.

of 25th July 1904, it may be useful to summarise the combined result of both, which is as follows:—

"The jurisdiction of Indore Criminal Courts is limited to cases —

i) Where a native officer or soldier* while on leave within the State commits an offence of any kind against the law of the State,

ii) Where a native officer or soldier while on leave within the State is arrested for an offence committed in the State on some previous occasion whether he was then on leave or not; but not where he has been already tried & either acquitted or punished by the British authority for an offence committed on duty.

2 Our Courts have no jurisdiction in regard to offences committed while not on leave. The offender may be arrested if the law permits of it, but he should be forthwith handed over to the nearest military authority.

3 It seems advisable that [illegible] affecting the jurisdiction of our Courts should be published in the form of a notification

* The word "soldier" seems to be loosely used as including both officers & soldiers.

NOTE.—Contn. sheet.

MGCPB—50,000—17-2-05

Serial No.

the Sovereign, as there is no statutory power that I am aware of under which the executive Government can issue the necessary orders for limiting the said jurisdiction. (cf. the Notifn issued in 1904 in regard to jurisdiction over European British subjects)

17. I have accordingly prepared a draft notifn; if this be approved, the other draft of an order would not be necessary.

K. S. Bhyravadoo
P. K. Venkatasubbayyar
15.5.05

Dey

18. Two drafts submitted by Diwan Bahadur this day
Committee
19.5.1905

19.5.05

12 I agree with the Dy Secy. "Any kind of offence" is very general but the Govt of India have understood to concede to the State jurisdiction over officers except in regard to offences committed on board a vessel. A notification as proposed seems more suitable than an order. C. Bis.

22/5/05

23-5-1905 (Two) drafts may

(revised) 25/5/05

25/5/1905

265
23-5-05
67/59
26/5/05

MGCPB—50,000—17/2/05

General and Revenue Secretariat.

File No. 30 of 1904

Serial No.	
4	The draft was approved by the Dewan on 4/8/05 to the Compiler, Mysore Gazetteer. No. J 418 C-35-4 dated 7th August 1905 Forwards for publication a Notification Calling persons within the ~~[illegible]~~ limits of the jurisdiction of the Criminal Courts in Mysore over Native officers of the Indian Army.

III Desn 4/8 (Courts)

R. F. B.—4-04.—1,000.

C 733 Mor
S No 1

Y 289
(4-50)

Letter No. 3573,
dated the 25th July 1905,

FROM

R. C. H. MOSS. KING, Esq., I. C. S.,
the FIRST ASSISTANT TO THE RESIDENT IN MYSORE,

to

The Dewan of Mysore.

Pol no. 128 of 25-7-04.

Dated Bangalore, 25th July 1904.

S No 1

I am directed to acknowledge, with thanks, the receipt of Mr. Anantaswami Rao's letter No. G.6200, dated 8th June 1904, regarding the suspension of the sentence passed on Sowar Ziabuddin Khan, one of the accused concerned in the Agaram riot case.

2. Under the orders of the Government of India I am now to request that the conditional release of Ziabuddin Khan which was announced in the letter referred to above may be made absolute, that he may be discharged from his bond, and that under Section 401 of the Code of Criminal Procedure the Durbar may be pleased to remit the whole of the unexpired portion of this sowar's sentence. I am also to ask that the further proceedings against the other accused (Shan Singh) may be abandoned if this has not already been done. It is understood that these two accused will be dealt with by the Military authorities.

3. In this connection I am to state that the Government of India have decided that the jurisdiction of criminal Courts in Native States' over Native Officers and soldiers of the British Army should be strictly and exclusively limited to the following cases:-

(i) When a Native soldier while on leave within a Native State

√

State commits an offence which renders him subject to arrest, or

(ii) when a Native soldier while on leave within a Native State is arrested for an offence committed by him in that State on some previous occasion: provided that the offence so committed is one of those entered in the schedule to the Indian Extradition Act.

4. In communicating these instructions for the information of the Government of His Highness the Maharaja, I am to say that the Resident has no doubt that the Durbar will in future carry them out with the same loyalty and goodwill which they have always displayed in their dealings with the Government of India.

I have the honour to be,
Sir,
Your most obedient servant,

First Assistant Resident.

SW 2
Jn No 35

To

The First Assistant to the Hon'ble
the Resident in Mysore.

Letter, Pol No 265 Dt 20.9.1902

Sir,

SW 2

I am directed to acknowledge the receipt of your letter No. 3573, dated the 25th July 1902, and in reply to para 2 thereof, to state that under section 401 of the Code of Criminal Procedure, the Durbar have remitted the unexpired sentence of Ziabuddin Khan who has also been discharged from his bond; and that under section 494 of the same Code, the only provision of law under which the Government could legally convey instructions of the kind in question, the Public Prosecutor has been directed to withdraw with the consent of the Court, the prosecution against the other accused Shan Singh.

Paper under disposal.

A

B

2. With reference to the paragraphs 3 and 4 of your letter, I am directed to state that while the Govt. of His Highness the Maharaja will gladly give effect to the intentions of the Govt. of India contained therein, they are at the same time, anxious to have the exact scope of the new

new provisions contained in para 3 of your letter defined beyond all doubt.

3. In the first provision, the words "an offence which renders him subject to arrest" are understood to include all cases in which an offender can be arrested either under a warrant issued by a Magistrate or without a warrant by the Police, ~~viz., cognizable cases and non-cognizable cases in which warrants should in the first instance, issue for the arrest of the accused~~. Further, it is noted that this provision is not limited to offences entered in the Schedule to the Indian Extradition Act. It does not expressly throw any light on the procedure the Government of His Highness the Maharaja should adopt in three possible alternative cases, viz., firstly, when a Native soldier of the British Army commits within the State while not on leave, an offence which does not subject him to arrest as stated above; secondly, when he commits therein, while on leave, an offence not falling within the terms of the provision in question; and thirdly, when he commits an offence contemplated in the first provision while not on leave.

4. As regards the second provision, it is presumed that the expression "on some previous occasion" is independent of the circumstance whether a Native soldier

soldier is, at the time of the commission of the offence, on leave or no. The observations made in the preceding para would also apply to this provision which is silent on the steps the Durbar could take regarding an offence outside the Indian Extradition Act.

5. In these circumstances, I am directed to request you to be so good as to place the matter before the Hon'ble the Resident and communicate his views in detail since the Govt. of His Highness the Maharaja are solicitous that in a matter of this importance, the instructions conveyed by them to their subordinate authorities should be so clear and definite as to be incapable of being misunderstood or misapplied on future occasions.

I have the honour &c.

15.IX.04

Copd: V.M.R. 20-9-04

Exmd: MM. 20-9-04

J-234/

R. P. B.—4-05.—500.

Letter No. 2622/2
dated the 11th May 1905

FROM

R. C. H. MOSS KING, Esq., I. C. S.,

FIRST ASSISTANT TO THE RESIDENT IN MYSORE.

To

The Dewan of Mysore.

Dated Bangalore, 11th May 1905.

SIR,

I am directed to reply to Mr. Venkatavaradiengar letter Pol No.265, dated the 20th September 1904, regarding the jurisdiction of criminal courts in Native States over native officers and soldiers of the Indian Army.

2. The Durbar have been informed in my letter No.357 dated the 25th July 1904 that the jurisdiction of such courts is limited to:-

(i)the case of a Native soldier who ~~xxxx~~ while on leave within a Native State commits an offence which renders him subject to arrest

(ii)that of a Native soldier who while on leave within a Native State is arrested for an offence committed by him in that State on some previous occasion; provided that the offence so committed is one of those entered in the schedule to the Indian Extradition Act.

They now enquire what is the correct procedure in the following cases:-

(a)when a Native soldier of the Indian Army commits within a Native State, while not on leave, an offence which does not subject him to arrest;

(b)when a Native soldier of the Indian Army commits within the state, while on leave, an offence which does not subject him to arrest

arrest;

(c)when a native soldier of the Indian Army commits within the State, while not on leave, an offence which does ~~xxx~~subject him to arrest;

they also desire to know:-

(d) whether an offence previously committed in a native state((ii)supra) means an offence committed by such soldier when not on leave or when on leave; and

(e) what steps they can take when the offence referred to under(d) is not included in the schedule to the Indian Extradition Act.

3. I am to state that as regards(a) the courts of Native States have no jurisdiction over a native officer or soldier of the Indian Army who, while not on leave, commits any kind of offence within their territories-

As regards(b), the native officer or soldier who, while on leave in a Native State commits an offence of any kind against the law of such State is amenable to the jurisdiction of the State Courts.

As to case(c) the offender may be arrested by State authority in any case in which the law of the State permits of such arrest, but he should be handed over forthwith to the nearest Military authority.

With reference to (d) the words"an offence committed by him in that State on some previous occasion"(paragraph 2(ii)supra) may be interpreted in their broadest sense, the meaning of the phrase not being restricted to offences committed while on leave. The jurisdiction of the Native State Courts will not, however, extend to the case of a Native soldier, who has been charged with an offence previously committed while on duty,and who has already been tried and either acquitted or punished by the British uthorities for such offence.

As regards(e), I am to say that the Government of India are prepared o waive the restriction imposed by the words"provided that the offence so committed is one of those entered in the schedule to the Indian Extradition Act"(paragraph 2(ii)supra).

I have the honour to be,
Sir,
Your most obedient servant,

First Assistant Resident.

Do the / amplify, Rejoice for Gr. 2 35 of 08
Gr. 1 Nr. 4

8/8/05

Dy Notify

No. J 418
C. 354

Notification No. J 418, dated the 5th August 1905.

In pursuance of the decision of the Govt of India communicated in the marginally noted letters from the

No 3513 of the 25th July 1905 } First
No 2627 of the 11th May 1905 } Assistant

to the Hon'ble the Resident in Mysore, His Highness the Maharaja is pleased to issue the following orders for the guidance of all criminal courts in the Mysore State:-

Nil

22/5/05

1. The jurisdiction of the Criminal Courts in Mysore over Native Officers and Soldiers of the ~~British~~ Army is strictly and exclusively limited to the following cases:-

i) When a Native Officer or Soldier while on leave within the State commits an offence of any kind against the laws of the State.

ii) When a Native Officer or Soldier while on leave within

1927

Indian

4. VIII. 05

5/8/1905

Secy's Correction in the four Copies

the State, is arrested for an offence committed by him in the State on some previous occasion, whether he was on leave or ~~not on duty~~ on such occasion: provided that the jurisdiction of the Courts of the State does not extend to the case of a native officer or soldier who has been charged with an offence previously committed while on duty and who has already been tried and either acquitted or punished by the British authorities for such offence.

2. The Courts of the State have no jurisdiction over a native officer or soldier of the ~~British Indian~~ Army who, while on leave, commits any kind of offence in Mysore. The offender may be arrested by the State authorities in any case in which the law of the State permits of such arrest, but he should be handed over forth-

with

to the nearest British military authority.

15-5-05.

17.5.1905
Secy

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" the Inspector General of Police

Copied 7/8/05.
Examined 7/8/05